Tahsil Naidu and Another

Vs

Kulla Naidu and Others

Civil Appeal No. 1795 of 1966

(V. Bhargava, K.S. Hegde, A.N. Ray JJ)

19.09.1969

JUDGMENT

BHARGAVA, J. -

1. This appeal arises out of a suit for partition instituted by the two appellants claiming a share in the joint Hindu family property as successors-in-interest of one Kothandaraman alias Kumarasami Naidu who died in the year 1943. When Kothandaraman died, he, his father Rangappa Naidu, his uncle Ramasami Naidu, and the latter's son Kullan alias Kumaraswami formed a joint Hindu family. Kothandaraman died leaving his widow Nagarathinammal who was plaintiff No. 2 and is appellant No. 2 in this appeal. His father Rangappa Naidu was also alive, but he died in the year 1944. On the death of Rangappa Naidu, Ramasami Naidu, his brother, become the 'Karta' of the joint family which included his son, Kullan alias Kumaraswami, and plaintiff No. 2, the widow of Kothandaraman. Ramaswami Naidu executed a will on 1th July, 1949 bequeathing portions of the joint family properties to various members of the family, because he was in actual possession of all the properties. Subsequently, in the same year 1949, Ramasami Naidu died. Some of the properties were transferred by persons who took possession of the properties in accordance with the will of Ramasami Naidu. The, according to plaintiff No. 2, she, on 26th January, 1955, adopted plaintiff No. 1, Tahsil Naidu, as a son and partition of the property was claimed on the basis that, after his adoption, Tahsil Naidu was entitled to a half share in the properties of the joint family. It was further urged that the will made by Ramasami Naidu was void and ineffective, and that the various transfers of the properties were also not binding on him. The suit was instituted by the two plaintiffs because defendant No. 1 Kullan alia Kumaraswami Naidu, who was under the guardianship of his mother Jayammal, defendant No. 2, refused to recognise the adopting, challenged its validity and did not accede to the request to give a share in the property to the plaintiffs. The main question that arose in the suit for decision was whether the adoption of plaintiff No. 1 by plaintiff No. 2 was valid.

2. It was the admitted case of the parties that Kothandaraman had died without giving any authority to his wife Nagarathinammal to adopt a son. The claim on behalf of the plaintiffs was that, even in the absence of authority from her husband, plaintiff No. 2 was entitled to adopt a son after obtaining the consent of the nearest sapindas of her husband. The case put forward was that she gave a notice to Jayammal and Kullan minor to give their consent to the adoption of plaintiff No. 1 who was the son of Damodaram, brother of plaintiff No. 2, and who was further the son of the real sister of Kothandaraman. However, without waiting for any consent being given by Jayammal, plaintiff No. 2 proceeded with the adoption after obtaining consent of the next three nearest Sapindas Rangappa Naidu, Devarajalu and Umavadan alias Rangan. Though, at the first stage, there was some dispute about the pedigree, by the time the case came up before the High Court the pedigree, which was set up on behalf of the appellants in the plaint, was accepted as correct. According to that pedigree,

when Kothandaraman died, and even when the adoption took place, his grandmother Ammakutti Ammal was also alive. She, in fact, died after the institution of the suit. Apart from her, Kullan and Jayammal, the nearest Sapindas of Kothandaraman at the time of adoption were Rangappa Naidu, Devarajalu and Umavadan. The plaintiffs, therefore, claimed that the adoption was made with their consent as, under the Hindu Law applicable in Madras, it was not necessary to obtain the consent either of the minor Kullan, or of the two females Jayammal, widow of Ramaswami Naidu, and Ammakutti Ammal, grandmother of Kothandaraman.

3. The suit was resisted on behalf of the defendants challenging the validity of the adoption on two grounds. The first ground was that, in fact, the consent to the adoption was not obtained from Rangappa, Devarajalu and Umavadan as pleaded on behalf of the plaintiffs and, in any case, if the consent was obtained, it was not properly given by these Sapindas after exercising their independent judgment as required, so that the consent could not validate the adoption. The second ground was that, admittedly, Ammakutti Ammal, the grandmother of Kothandaraman, was also a Sapinda and nearer in degree to the three persons consulted. Since her consent was never obtained, the adoption must be held to have been resorted to without the consent of the nearest Sapinda and was, consequently, invalid.

4. The Trial Court held that the adoption was valid, and consequently, granted a preliminary decree for partition. The High Court of Madras, in appeal, differed from the Trial Court. On the first question, the High Court did not express a definite opinion in its judgment and contented itself with stating that it is probable that the adoption was thought of by plaintiff No. 2 more with an idea of getting the properties than being actuated by a genuine religious motive and, further, that it was doubtful whether the plaintiffs had succeeded in proving that the adoption was made with the consent of the three Sapindas, Rangappa Naidu, Devarajalu and Umavadan. On the second point, however, the High Court accepted the plea put forward on behalf of the defendants that it was necessary for the adoption to be valid that the consent of Ammakutti Ammal, the grandmother of Kothandaraman, should have been obtained even though she was a female Sapinda. The High Court repelled the contention of the plaintiffs-appellants that it was not necessary to obtain the consent of female Sapindas for a valid adoption and this Hindu law only requires consent of the nearest male sapindas. On this view, the High Court allowed the appeal, set aside the decree passed by the Trial Court and dismissed the suit of the plaintiffs. Consequently, the plaintiffs have come up to this Court in this appeal by certificate under Article 133 of the Constitution.

5. On the first point, Mr. S. T. Desai appearing on behalf of the appellants, drew our attention to the decision of this Court in V. T. S. Chandarasekhara Mudaliar and Others v. Kulandaivelu Mudaliar and Others, which appears to be the only case in which this Court had occasion to lay down the principles which applied to adoption in Madras. The Court, in dealing with that case, reviewed the various decisions given by the Madras High Court the Privy Council and indicated the principles that must be applied when judging the effect of consent of Sapindas on the validity of an adoption. In that case, a conditional consent had been given by some of the Sapindas, whereas some others had refused to give consent to the adoption, and the controversy centered round the question whether the consent given by some and refusal by others was proper. The Court indicated that such a question depended for its solution on the answer to five inter-related questions which were formulated as follows :

(1) What is the source and the content of the power of the widow to adopt a boy ?

(2) What is the object of adoption ?

(3) Why is the condition of consent of the Sapindas for an adoption required under the Hindu law for its validity ?

(4) What is the scope of the power of the Sapindas to give consent to an adoption by a widow and the manner of its exercise ? and

(5) What are the relevant circumstances a Sapinda has to bear in mind in exercising his power to give consent to an adoption ?

The Court took into consideration the decisions till then rendered which had bearing on these questions and, consequently, we do not consider it at all necessary to again discuss all those cases. On the first question, the Court held that a widow, either authorised by her husband to take a boy in adoption, or after obtaining the assent of the Sapindas, has full discretion to make an adoption, or not to make it, and that discretion is absolute and uncontrolled. She is not bound to make an adoption and she cannot be compelled to do so. But, if she chooses to take a boy in adoption, she acts as a delegate or representative of her husband and her discretion in making the adoption is strictly conditioned by the terms of the authority conferred on her by her husband; but, in the absence of any specific authority, her power to take a boy in adoption is coterminus with that of her husband, subject only to the assent of the Sapindas. Dealing with the next question the Court held that it may safely be held on the basis of the authorities that a validity of an adoption has to be judged by spiritual rather than temporal considerations and that devolution of property is only of secondary importance. It is the answer to the third and the fourth questions with which we are primarily concerned. On the third question, the Court held that the reason for the rule of obtaining consent of the Sapindas is not the possible deprivation of the proprietary interests of the reversioners but the state of perpetual tutelage of women, and the consent of kinsmen was considered to be an assurance that it was a bona fide performance of a religious duty and a sufficient guarantee against any capricious action by the Court quoted with approval the observations of Rajamannar, C.J., in Venkatarayudu v. Sashamma, to the following effect :

> "As Mayne (Hindu law, tenth edition) remarks at Pages 221 and 222 it is very difficult to conceive of a case, where a refusal by a Sapinda can be upheld as proper. 'The practical result of the authorities therefore appears to be that a Sapinda's refusal to an adoption can seldom be justified'. It may be that in a case where the Sapinda refused his consent to the adoption of a boy on the ground that the boy was disqualified, say, on the ground of leprosy or idiocy, the refusal would be proper. In this case, we have no hesitation in holding that the refusal by the plaintiffs on the ground that the proposed boy was not a Sapinda or Sagotra or a Gnati was not proper."

Ultimately, the Court summarised its decision as follows :

> "The power of a Sapinda to give his consent to an adoption by a widow is a fiduciary power. It is implicit in the said power that he must exercise it objectively and honestly and give his opinion on the advisability or otherwise of the proposed adoption in and with reference to the widow's branch of the family. As the object of adoption by a widow is two-fold, namely : (1) to secure the performance of the funeral rites of the person to whom the adoption is made as well as to offer Sapindas to that person and his ancestors and (2) to preserve the continuance of his lineage, he must address himself to ascertain whether the proposed adoption promotes the said

> two objects. It is true that temporal consideration, though secondary in importance, cannot be eschewed completely but those considerations must necessarily be only those connected with that branch of the widow's family. The Sapinda may consider whether the proposed adoption is in the interest of the well-being of the widow or conducive to the better management of her husband's estate. But considerations such as the protection of the Sapindas' inheritance would be extraneous, for they pertain to the self-interest of the Sapinda rather than the well-being of the widow and her branch of the family. The Sapindas, as guardians and protectors of the widow, can object to the adoption, if the boy is legally disqualified to be adopted or if he is mentally defective or otherwise unsuitable for adoption. It is not possible to lay down any inflexible rule or standard for the guidance of the Sapinda. The Court which is called upon to consider the propriety or otherwise of a Sapinda's refusal to consent to the adoption has to take into consideration all the aforesaid relevant facts and such others and to come to its decision on the facts of each case."

It is these principles which we are called upon to apply in the present case to decide how far the requirements for a valid adoption have been satisfied when plaintiff No. 2 adopted plaintiff No. 1.

6. When this aspect of the case was being discussed in Court, learned counsel appearing for the respondents put forward the argument that, in the present case, the evidence shows that the motive of the widow, plaintiff No. 2, or, in any case, her dominant motive in making the adoption, was to ensure that a half share in the property of the family comes into the possession of herself and her adopted son, and that the adoption was not made with any spiritual considerations or for the performance of any religious duty. Learned counsel, thus, wanted to challenge the motive of plaintiff No. 2 in adopting plaintiff No. 1. On the other side, the argument was that, once the consent of the nearest Sapindas is obtained by a widow before making an adoption, the question of motive of the widow making the adoption becomes irrelevant and should not be enquired into. The principles laid down in the case cited above show that the consent of a kinsman was considered to be an assurance that the adoption was in pursuance of a bona fide performance of religious duty and would be a sufficient guarantee against any capricious action by the widow in taking the boy in adoption. This principle laid down by this Court, thus, does indicate that the motive of a widow need not be enquired into, because the very fact of the consent being given by the Sapindas is a guarantee that the adoption is being made for proper reasons. In the present case, however, we find that, even on facts, the submission made on behalf of the respondents cannot be accepted, because there is evidence to show that the adoption was made by the plaintiff No. 2 with the object of proper performance of ceremonies for the benefit of her deceased husband and other ancestors, through plaintiff No. 2 also had in mind the advantage she would receive because her own adopted son would obtain rights to the property and she may be better looked after. The intention of the widow, in making the adoption, was clearly expressed by her in the notice Ext. A-2 sent on 6th December, 1954 by her counsel to defendant No. 2 Jayammal who was the guardian of defendant No. 1, Kulla Naidu, the latter being the person who was then holding the family property. It was stated in that notice "that my client is very anxious to adopt a son to her husband Kothandaraman Naidu alias Kumaraswami Naidu for securing a good and to her late husband performing his ceremonies offering oblations perpetuating the progency (Line) and to save soul of my client's husband from what is known as 'Puth Narakam'". Similar expression of her intention is contained in another letter Exhibit A-4 which was sent by the Advocate on her behalf to one of the Sapindas, Devarajulu Naidu, asking for his consent to the adoption. It has also come in evidence that letters similar to the one sent to Devarajulu Naidu were also sent to the other two nearest Sapindas Rangappa Naidu and Umavadan in order to obtain their consent. In addition, even in Court, plaintiff No. 2 appeared as a

witness and stated on oath that "the adoption was to my husband and for perpetuating and to do the ceremonies". It was argued on behalf of the respondents that, even though these expressions of the reason for adoption by the widow exist in the documents and in oral evidence, the further facts elicited show that her dominant motive was in fact to obtain possession of property and that the consideration of spiritual benefit to her husband did not exist. It is true that, in cross-examination, some facts have been elicited which indicated that considerations relating to material benefit also existed when plaintiff No. 2 decided to make the adoption. She herself admitted that the subject of adoption was broached to her about a year before the adoption by one Ethirajulu Naidu who said that, if she adopted a boy, he would get the property and she could depend on it. According to her, the same person advised her to take plaintiff No. 1 in adoption. Even the consenting Sapinda Rangappa, who appeared as a witness, admitted in cross-examination that the second plaintiff had no one to fed her, and her relatives did not call her; and that was the reason why she made the adoption. These answers elicited in cross-examination do not, however, in our opinion, show that the question of spiritual benefit or performance of religious ceremonies was not one of the considerations in making the adoption. In fact, on the evidence, it appears that Rangappa Naidu, when he gave his consent, had been told why plaintiff No. 2 was going to make the adoption in the written letter sent to him; and it seems that his consent was given in view of that consideration, though, in addition, as he has stated on oath, he also took into account the fact of material benefit to plaintiff No. 2.

7. This takes us to the crucial point whether, in this case, the consent of the Sapindas that was obtained by plaintiff No. 2 before adopting plaintiff No. 1 was a proper consent which would validate the adoption. Of the three consenting sapindas, Rangappa Naidu was the only one who was examined in Court and he clearly stated in his examination-in-chief that he gave his consent in writing vide letter Ext. A-7. He added that printed invitations were issued in his name and he and his cousin Devarajulu were present at the adoption. A deed of adoption was written and executed and he and Devarajulu both attested it. He also definitely stated that he made no profit at all out of this adoption, nor was he given any promise that he would get any property by giving his consent to the adoption. To challenge this evidence, learned counsel for the respondents drew our attention to some of the statements made in cross-examination. Rangappa Naidu, when questioned, seems to have admitted that he signed the letter of consent at the place of adoption, even though his consent letter Ext. A-7 purports to have been sent much earlier than the date of adoption. It seems to us that, being an old man of 80 years of age, he had some confusion in his mind about making the signatures on various documents. In his examination-in-chief, he has clearly stated that he had signed the deed of adoption at the time of adoption and it seems that, when cross-examined, he became confused and gave his answer under the impression that deed of adoption was also the consent letter signed by him. In our opinion, the statement made in cross-examination that he signed the letter of consent at the place of adoption was really intended to refer to his signatures on the deed of adoption which signatures he must have made after expressing again his consent to the adoption. That his mind was confused appears from the further circumstance that he stated in cross-examination that the name of the boy to be adopted was not mentioned in the invitation issued in his name, though, in fact, the name is actually mentioned. We are, therefore, unable to accept the submission made on behalf of the respondents that the consent of Rangappa Naidu has not been properly proved in this case.

8. Apart from the consent of Rangappa Naidu, the plaintiffs also relied on the fact that consent was also given by the only other two equally remote Sapindas Devarajulu and Umavadan. The High Court, in its judgment, appears to have held that the consent of these persons was not proved satisfactorily by the plaintiffs, though the Trial Court had taken the contrary view. It is true that, in

this case, devarajulu and Umavadan were not examined. The consent letters signed were, however, put on the file. Devarajulu's signature on the consent letter was proved by Damodaran Naidu who obtained the letter of consent and who is the natural father of plaintiff No. 1. Damodaran Naidu clearly proved that this letter was signed in his presence by Devarajulu. The High Court expressed the view that this consent letter cannot to taken to be proved on the ground that Devarajulu himself was not examined as a witness, and incorrectly ignored the fact that the document was proved by the evidence of Damodaran Naidu. Reference, in this connection, was also made to the statement of plaintiff No. 2 herself that she had obtained the consent of Devarajulu about a month before she went to the Vakil for advice about adoption and that she did not take the consent from him in writing. The fact that she did not take the consent from him in writing. The fact that she did not herself obtain the written consent from Devarajulu does not, however, detract from the value to be attached to the written consent which was obtained by her brother Damodaran and not by herself. No doubt, there are some petty discrepancies between the evidence of these witnesses, but we do not think that they are of such a nature as would justify our disbelieving them. In our opinion, the consent of Devarajulu to the adoption was also properly established.

9. In the case of Umavadan, of course, there is a discrepancy that, according to plaintiff No. 2 herself, she obtained his consent when she met him 10 days after the adoption, though the consent letter by him purports to have been signed earlier. The admission was made by plaintiff No. 2 in her cross-examination, and, in view of this admission, we do not think we will be justified in differing from the decision of the High Court that Umavadan's consent has not been properly established. In his case, there was also some argument as to his capacity to give consent. The case seems to have been put forward that he was deaf and dumb and, consequently, incapable of giving evidence, though plaintiff No. 2 herself in her cross-examination made a qualification that Umavadan could hear, though he was dumb. It also appears that he can write and make his signature. It is possible that he may have given, his consent in writing when asked orally or in writing, because he could both hear and read; but, as we have said earlier, in view of the admission of plaintiff No. 2 that she obtained his consent 10 days after the adoption, we must disregard the consent given by him. Thus, the adoption is supported by the consent given by two out of three equally near Sapindas.

10. The effect of this consent was challenged on two grounds. One was that the consent should have been obtained from all the three and not merely two. In our opinion, he consent of the majority would be sufficient to satisfy the requirement that a widow, in making the adoption should consult the nearest Sapindas. It is not essential that the consent should have been obtained from all the three, particularly when Umavadan was at least partially incapacitated as being dumb.

11. The second ground, on which the value of the consent by these Sapindas was challenged, was that no evidence has been produced to show that, when giving their consent, they had consciously applied their mind to the question whether the widow was making the adoption for the performance of a religious duty or for spiritual benefit to the husband of the adoptive mother and his ancestors. As we have indicated earlier, out of the two consenting Sapindas, only Rangappa Naidu has been examined and, in his evidence he has not made any such specific statement. That, in our opinion, is not very material, because, as the principles laid down in various cases show, the very fact that consent is given by a Sapinda implies that the adoption is considered desirable and is being resorted to by the widow for spiritual and religious considerations and not out of caprice. Every Sapinda knows that, as soon as an adoption is made, spiritual benefit will accrue to the deceased husband and that the existence of the adopted son will perpetuate his line. Such consciousness is implied in giving the consent. It is only when the consent is being refused by a Sapinda that it becomes relevant see whether the refusal was justified on the ground omission of counsel in asking rangappa

Naidu whether he had considered the question of spiritual benefit at the time of giving consent cannot, therefore, imply that the consent was given for other considerations. A consent would not doubt, be of no value for validating an adoption if the person giving the consent has his own personal motives. In the present case, Rangappa Naidu clearly stated that he was not to get any benefit at all out of the adoption of plaintiff No. 1 by plaintiff No. 2. There is also, however, the further fact that, according to the evidence, letters were sent to both Rangappa Naidu and Devarajulu Naidu in which the reason for adoption was expressed by the counsel for plaintiff No. 2. As we have noticed earlier, they gave their written consent in response to those letters, and it can be presumed that the consent was given in view of the object indicated in those letters asking for their consent. There is the further circumstance that, according to the evidence, both Rangappa Naidu and Devarajulu were present at the adoption and signed the adoption deed. They are both literate. The adoption deed clearly mentions the purpose of adoption which is the proper purpose for a widow in making the adoption; and it would not be unjustified to infer that both these persons had consented to the adoption again at that time in view of the object mentioned in the deed of adoption. On facts also, therefore, it appears to be justified to hold that the consent was given by these two Sapindas for proper reasons and the fact that they had given their consent would ensure the validity of the adoption.

12. On the second question, one aspect that has considerable bearing is the reason which led the law-givers in the Hindu law to insist on the right of a widow to adopt a son being contingent either on conferment of authority on her by her husband, or, in the absence of such authority on the assent of the nearest Sapindas. This question was also considered to some extent by this Court in the case of V. T. S. Chandarasekhara Mudaliar (supra) where the Court began by noticing that the basis for the doctrine of consent may be discovered in the well-known text of Vasishtas :

> "Let not a woman given or accept a son except with the assent of her Lord."

The Court then also quoted two texts of Yagnavalkya in Chapter 1, verse 85 and in Chapter 2, verse 130 which are ordinarily relied upon to sustain the said doctrine :

> "Let her father protect a maiden; her husband a married woman; sons in old age; if none of these, other gnatis (kinsmen). She is not fit for independence."
>
> "He whom his father or mother gives in adoption is Dattaka (a son given)."

After noticing briefly the summary of the evolution of the law by subsequent commentators, the Court proceeded to hold that the said doctrine is mainly founded on the state of perpetual tutelage assigned to women by Hindu law expressed so tersely and clearly in the well-known-text of Yagnavalkya in Chapter 1, verse 85, quoted above. The Court then took notice of the decision in The Collector of Madura v. Moottoo Ramalinga Sathupathy & connected cases (popularly known as, and hereinafter referred to as the 'Ramnad's case') and referring to it as the leading decision approved of the observations of Sir James William Colvile who made a real contribution to the development of this aspect of Hindu law which were to the following effect :

> "But they (the opinions of Pandits) show a considerable concurrence of opinion, to the effect that, where the authority of her Husband is wanting, a Widow may adopt a Son with the assent of his kindred in the Dravida Country."

The Court also indicated that the reason for this rule was clearly stated in that judgment as follows :

> "The assent of kinsmen seems to be required by reason of the presumed incapacity of women for independence, rather than the necessity of procuring the consent of all those whose possible and reversionary interest in the estate would be defeated by the adoption."

In Veera Basavaraju and Others v. Balasurya Prasada Rao & Another, their Lordships of the Privy Council reiterated the observations made in the case of Raghanadha v. Brojo Kishoro, to the following effect :

> "But it is impossible not to see that there are grave social objections to making the succession of property - and it may be in the case of collateral succession, as in the present instance, the rights of parties in actual possession - dependent on the caprice of a woman, subject to all the pernicious influences which interested advisers are too apt in India to exert over women possessed of, or capable of exercising dominion over, property."

13. Thus, the entire case-law on the subject clearly indicates that the requirement for consent of a Sapinda for adoption by a widow who has not obtained the consent of her husband in his lifetime was laid down, because Hindu law considers a woman incapable of independent judgment and proceeds on the basis that a woman is likely to be easily misled by undesirable advisers. This aspect, in our opinion, has considerable bearing on the question whether a widow making an adoption must or need not obtain the consent of another senior woman in the family who is herself a widow.

14. It seems to us that, if a woman is incapable of exercising independent judgment in the matter of deciding whether she should adopt a son to her deceased husband, she can hardly be a competent adviser to another widow on the same matter. In the present case, for example, if the grand-mother Ammakutti were to decide to adopt a son, she would have to obtain consent of Sapindas in the absence of authority from her deceased husband and that requirement would arise because of her incapacity to exercise independent judgment. If she cannot exercise in independent judgment in the matter of making an adoption herself, it would follow that she would not be able to exercise an independent judgment to advise plaintiff No. 2, her grand-son's widow. The advice of a person incapable of independent judgment would hardly ensure that the adoption to be made by a widow is proper and justified. On the principles thus recognised in Hindu law, it would be justified to hold that a Hindu widow, even if she happens to be the nearest Sapinda to the widow seeking to make the adoption, would not be a competent adviser and, consequently, there can be no requirement that her consent must be obtained for validating the adoption. The principles clearly point to the conclusion that the consent must be obtained from the nearest made Sapinda.

15. Learned counsel appearing for the respondents, in support of the decision of the High Court, drew our attention to the decision of Their Lordships of the Privy Council in Ramnad case where it was held :

> "Upon the whole, then Their Lordships are of opinion, that there is enough of positive authority to warrant the proposition that, according to the law prevalent in the Dravada Country, and particularly in that part of it wherein the Ramnad zemindary is situate, a Hindoo Widow, not having her Husband's permission, may, if duly authorised by his kindred, adopt a son to him."

He emphasised the fact that, in laying down this principle, the word was "kindred" without any

qualification whether the kindred should be a male or female. Reliance was also placed on the fact that, in that case, the Privy Council held the adoption made by the widow to be valid, inter alia, on the ground that the consent of a senior female kindred had been obtained. In that case, the widow had adopted a son with the consent of a distant agnate - a Samanodaka - who was the natural male protector of the widow in the absence of nearer male relations, as well as with the consent of the mother-in-law and other persons who were proved beyond all question to have assented to the adoption. This second aspect of the decision of the Privy Council in attaching value to the consent of the mother-in-law for purposes of holding the adoption to be valid was, however, based on the peculiar facts and circumstances of that case. Their Lordships found that the mother-in-law was unquestionably the heir to the property next in succession to the widow who was making the adoption, and the mother-in-law had been specifically nominated by the deceased husband to look after his widow. He had addressed a letter to the Collector of the District in which he specifically stated that he had made arrangement that his mother, who was his guardian in every respect, and who had held chief right to the zemindary, was to enjoy the zemindary and all other things; was to pay Peishkist to the Cirkar, and was to maintain his royal wife, his daughter, and her younger sister, a small child; when the children grew up and attained proper age, she was to make an arrangement with regard to their right to the zemindary, and continue the same. In that case, therefore, it is clear that the opinion of the mother-in-law was considered of some importance by the Privy Council because of this special authority granted to her by the husband of the widow in his own lifetime. The case cannot be taken as deciding that, in every case, the consent of a mother-in-law would be competent to make an adoption valid, or that, in order to make a valid adoption, her consent must be obtained on the ground that she is the nearest kindred alive.

16. On this aspect of the Ramnad case in order to strengthen his argument, learned counsel referred to a decision of the Madras High Court in Rajah Damara Kumara Venkatappa Naranim Bahadur Varu v. Damara Renga Rao, in which it was held that an adoption by a junior widow without the consent of the senior widow was bad and could not be held to be valid. It was argued by the counsel in that case that the senior widow was entitled to be consulted as one of the kindred, while, on the other side, it was argued that a widow is not a Sapinda but only succeeds as one of the enumerated heirs. Wallis, C.J., in giving his decision, said :

> "I do not think it necessary to go into this question but having regard to the decision of Their Lordships in Ramnad case that the assent of the mother-in-law Mothuveroyee in that case was operative in support of the adoption, I should be disposed to hold that the senior widow was one of the kinsmen whom it was the duty of the junior widow to consult and that the adoption was bad for failing to consult her."

We are unable to accept the view expressed by Wallis, C.J., that the principle laid down in Ramnad case justified an inference that it was necessary to obtain the consent of the nearest Sapinda if she happened to be a widow. It is true that, in the Ramnad case, the adoption made by the widow was held to be valid, after attaching some weight to the opinion of the mother-in-law, but that was primarily because she had been given a special position by the writing left by the widow's husband when addressing his letters to the Collector. Another point to be kept in view when considering this Madras decision is that it is a wall-recognised principle in Hindu law that, if there are two widows, the senior widow has the preferential right to make an adoption; and it may be a good consideration, when judging the validity of an adoption by a junior widow to see whether she did so after obtaining the consent of the senior widow whose preferential right would thus be defeated.

17. A similar interpretation of the Ramnad case was accepted in another decision of the Madras High Court in Maharaja of Kolhapur v. S. Sundaram Ayyar and 15 others, where it was held that the consent of the Queen-mother was sufficient in Hindu law to validate the adoption made by the widow Rani, her daughter-in-law. In arriving at this decision, Kumaraswami Sastri, J., held :

> "It is clear from the decision of Their Lordships of the Privy Council in The Collector of Madura v. Moottoo Ramalinga Sathupathy (Ramnad case) that the consent of Avu Bai Saheba, the mother of Sivaji, would validate the adoption in the absence of any other Sapindas."

That case, again, had a special feature of its own, viz., that the Court found that there were no Sapindas, except Avu Bai Saheba in existence. It was held that, if there was no male Sapinda at all, it would be wrong to hold that the widow would not be capable of making an adoption at all and it was for this reason that it was held that the consent of the female Sapinda viz., the mother-in-law was sufficient to validate the adoption.

18. This interpretation of the decision of the Privy Council in the Ramnad case cannot, however, be accepted as correct in view of the subsequent decision by the Privy Council itself where the interpretation put was different. Mr. Ameer Ali, speaking for the Judicial Committee, in the case of Veera Basavaraju (supra), said :

> "The Ramnad case established the proposition that, in the Dravada Country, under the Dravadian branch of the Mitakshara law there in force, in the absence of authority from her deceased husband a widow may adopt a son with the assent of his male agnates."

In that case, thus, the Privy Council held that the reference to kindred or kinsmen, whose consent is to be obtained by a widow for a valid adoption, in Ramnad case was intended to cover male agnates only. In another subsequent case of Ghanta China Ramasubbayya and Another v. Moparthi Chenchuramayya, Minor, and Others, the Privy Council referred to this decision of Mr. Ameer Ali, and, after quoting the extract reproduced by us above, held :

> "The word "kindred and kinsmen", words of general significance, used in the Ramnad case, are here interpreted to mean "male agnates", and this interpretation is amply borne out by the facts of that case as already stated. Similar expressions appearing in the other cases should also be similarly interpreted."

Thus, the interpretation placed on the decision in the Ramnad case by Mr. Ameer Ali in Veera Basavaraju's case (supra) was further affirmed by the Privy Council in this latest case of Ghanta China Ramasubbayya (supra). In view of these decisions of the Privy Council, we do not think that we can accept the interpretation put on the decision in Ramnad case in the judgments of the Madras High Court. On the other hand, the correct interpretation of that case was further followed by the High Court of Andhra Pradesh in K. Varadamma v. Kanchi Sankara Reddi, and Others.

19. It was urged by learned counsel that the two decisions of the Privy Council in the cases of Veera Basavaraju, and Ghanta China Ramasubbayya (supra) were not concerned with the question whether it is necessary to obtain the consent of the nearest female Sapinda or not. In the former case, the adoption had been made with the assent of the remote Sapinda without the consent of the nearest Sapinda. In the later case, the question was whether the consent of the daughter's son, who would,

under Hindu law, be a preferential heir to the deceased husband, was necessary when consent was obtained from a sapinda who, in the order of succession, would come after the daughter's son. It was urged that the Privy Council in neither of these two cases was called upon to pronounce on the question whether, by using the expression "kindred or kinsmen" in Ramnad case it was intended to refer to male agnates only, or to all agnates whether male or female. Even though this is correct, we consider that the subsequent interpretation put on the decision in Ramnad case in these decisions by the Privy Council is entitled to great weight. Further, the view expressed in these decisions bears out our opinion which we formed on the basis of the position given to a woman in Hindu law as a person incapable of exercising independent judgment. Consequently, we must hold that the High Court wrong in holding the adoption of plaintiff No. 1 by plaintiff No. 2 in the present case as invalid and the decision of the High Court must be set aside.

20. As a result, we set aside the decision given by the High Court. The case will now go back to the High Court for deciding other issues which were in dispute before that Court and which the High Court left undecided because of its view that the suit of the plaintiffs had to be dismissed on the ground that the adoption of plaintiff No. 1 by plaintiff No. 2 was invalid. The costs of this appeal shall be payable by the respondents to the appellants.

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